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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/810,797	03/26/2004	Thomas J. Sisk	60,137-247	9772
26096	7590	10/09/2007	EXAMINER	
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			NGUYEN, TUAN N	
			ART UNIT	PAPER NUMBER
			3751	
			MAIL DATE	DELIVERY MODE
			10/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/810,797	SISK, THOMAS J.
	<b>Examiner</b>	<b>Art Unit</b>
	Tuan N. Nguyen	3751

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 15 August 2007.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 7-12 and 20-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 20 is/are allowed.
- 6) Claim(s) 7-9 and 21-24 is/are rejected.
- 7) Claim(s) 10-12 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

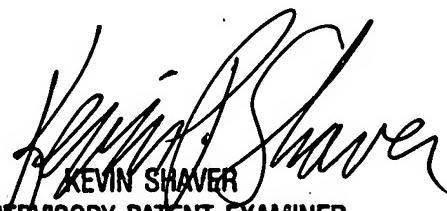
1. In view of the appeal brief filed on 8/15/07, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:



KEVIN SHAVER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

2. Accordingly, the amendment filed 3/27/07 has been entered and considered hereinafter.

***Response to Arguments***

3. Applicant's arguments filed 8/15/07 have been fully considered but they are not persuasive. After an appeal conference was held, it was determined that the interpretation of the Primucci gasket as a retainer assembly is proper because it has the sufficient structures to meet the retainer assembly as claimed and being utilized in the same environment. The claims fail to set forth the structure to distinguish therefrom. However, it was determined that Primucci fails to meet the language of claims 22-24. A new ground of rejection is applied to claims 22-24 as indicated below to perfect the issue for appeal purpose.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 7-9, 13; 14, 16 and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Primucci.

In regard to claim 7, Primucci discloses a shower surround comprising a first surround section (the middle section) having an inner band section; a second surround section (the top section) comprising an outer band section; and a retainer assembly (34) mounted to the outer band section (see Fig. 5), the retainer assembly comprising a first frame arm (40) opposed to a second frame arm (42) and a stop (36) which extends from one the first frame arm and the second frame arm, the inner band section receivable

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against the stop and between the first frame arm and the second frame arm (see Fig. 5).

In regard to claim 8, the outer band comprises a stepped band section (where 10 is pointing in Fig. 5) displaced from a surround surface.

In regard to claim 9, the inner band comprises a rib extends therefrom (shelf 14 is considered as the rib as claimed).

In regard to claim 13, 14 and 16, the method as claimed would be inherent during normal assembly of the Primucci shower surround.

In regard to claims 21, since the retainer assembly is a gasket, it is inherent that a multiple of seals integrally mounted within the retainer assembly to receive the inner band.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 22-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Primucci in view of Dron or Wissinger.

The Primucci reference shown the entire gasket/retainer assembly, as discussed above, is made of sealing material; therefore, it fails to show a seal mounted to a stop. The examiner has cited the Dron and Wissinger on 7/17/06 to show a seal layer mounted another materially different layer to form one single assembly/part. Since

parts (36, 40 and 42) of Primucci has a thickness, the outer half of that thickness can obviously be considered as the stop and arms as claimed and the inner half of that thickness can obviously be considered as the seals as claimed. It is hard to see since both halves are made from the same material; however, Dron and Wissinger are provided to provide a better explanation of the examiner's position. Therefore, the integral seal mounted to the stop to receive an end segment of the first inner band is generally L-shaped since the gasket/retainer assembly is an upside down U, wherein taking the section of 36 and a portion of the section 40 or 42 would result in an L-shaped. The integral seal would inherently include a first surface adjacent said stop and a second surface adjacent at least one of said first frame arm and said second frame arm.

***Allowable Subject Matter***

6. Claims 10-12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan N. Nguyen whose telephone number is 571-272-4892. The examiner can normally be reached on Monday-Friday (10:00-6:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on (571) 272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Tuan Nguyen  
Primary Examiner  
Art Unit 3751

TN